

January 26, 2001

Envirocare of Utah, Inc.  
Attn: Kenneth L. Alkema  
Senior Vice President  
46 West Broadway, Suite 116  
Salt Lake City, UT 84101

RE: REQUEST TO RECEIVE MAYWOOD AND WAYNE, NEW JERSEY FUSRAP  
MATERIAL FOR DISPOSAL

Dear Mr. Alkema:

This is in response to Envirocare of Utah's (Envirocare) letter of September 15, 2000, concerning the U.S. Army Corps of Engineers (Corps) request that Envirocare seek an approval from the U.S. Nuclear Regulatory Commission (NRC) to receive Formerly Utilized Sites Remedial Action Program (FUSRAP) waste from the Wayne and Maywood sites. As will be discussed below, the NRC is unable to grant such an approval, in its entirety, at this time.

In recent years, the NRC has made clear its position that it lacks jurisdiction over tailings produced at a facility not licensed by the NRC on the effective date of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) or thereafter. This includes certain material at FUSRAP sites. As you are aware, on December 13, 2000, the staff issued a Director's Decision in response to your petition filed pursuant to 10 CFR § 2.206. The Snake River Alliance submitted a similar petition that was considered in conjunction with Envirocare's petition. The Director's Decision constitutes the final agency position on this matter.

Because the Wayne site was not under NRC or Agreement State license on the effective date of UMTRCA, or thereafter, we do not agree with the determination that FUSRAP material from the Wayne site constitutes 11e.(2) byproduct material. Accordingly, Envirocare is not authorized to accept the Wayne FUSRAP waste under its current license because the procedures set out as an attachment to Envirocare's March 8, 1994 letter, which are incorporated in the Envirocare license by condition 9.3, prohibit disposal of waste other than 11e.(2) mill tailings in the 11e.(2) cell. For the same reason, Envirocare is not authorized to accept wastes originating from other pre-1978 FUSRAP tailings sites, such as the St. Louis, Missouri, and Niagara Falls, New York, sites.

It is our understanding that the Maywood site to which you refer is the Stepan Company facility, portions of which are currently licensed by the NRC under license number STC-1333. We note that the Maywood licensee is authorized to possess material stored in three burial pits and that this material is described as alkaline thorium phosphate tailings. Envirocare should verify through the Corps that the material it proposes to accept from the Maywood site is material from the burial pits licensed by the NRC. Envirocare should ensure that the disposal of the material is in conformance with the conditions of its license. Having met these conditions, Envirocare is authorized to accept this material for disposal.

It is also our understanding that some of the material that would be received from the Maywood site is material other than that stored in the NRC-licensed pits. For the same reasons detailed for the Wayne site above, Envirocare is not authorized under its current license to accept Maywood material from these areas.

Envirocare may request a license amendment to allow it to receive and dispose of pre-UMTRCA mill tailings, including material from the Wayne and Maywood sites. The amendment could provide that, notwithstanding the procedures set forth in the March 8, 1994, letter, pre-UMTRCA mill tailings may be disposed of in the 11e.(2) cell. On November 30, 2000, NRC issued interim guidance on disposal of non-11e.(2) byproduct material in tailings impoundments, as an attachment to NRC Regulatory Issue Summary 2000-23, "Recent Changes to Uranium Recovery Policy."

We understand that the Wayne and Maywood site material is radiologically, physically and chemically similar to and compatible with materials already being disposed of in the 11e.(2) cell, and we note that disposal in an 11e.(2) cell will provide adequate protection of the public health, safety, and the environment. Therefore, NRC would exercise Enforcement Discretion, and would not object to continued disposal of pre-UMTRCA mill tailings while Envirocare prepares, and NRC reviews, a license amendment request to dispose of such material in the manner described above. We would allow Envirocare 120 days from the date of this letter to prepare and submit to NRC its license amendment request to dispose of pre-UMTRCA mill tailings in its 11e.(2) cell.

In accordance with 10 CFR 2.790, a copy of this letter will be available for public inspection in the NRC Public Document Room or electronically from the Publicly Available Records (PARS) component of NRC's document management system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

If you have any questions, please contact Harold Lefevre of my staff, either by telephone at (301) 415-6678, or by e-mail at [hel@nrc.gov](mailto:hel@nrc.gov).

Sincerely,  
**/RA/**

Michael F. Weber, Director  
Division of Fuel Cycle Safety  
and Safeguards  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 40-8989  
License No. SMC-1559

cc: W. Sinclair, Utah Division of Radiation Control  
T. Brown, EPA, Region 8, Denver, CO  
T. McDonald, USACE, Washington, DC